VICTOR KEE YONG POEY v. DINERS CLUB MALAYA SDN. BHD.

[O.C.J. (Chang Min Tat J.) November 28, 1975]
[Kuala Lumpur — Civil Suit No. 1035 of 1974]

Moneylenders — Credit card facility club — Nature of — Respondent charged appellant additional sum for late payment of debt — Respondent claimed that it was service charge — Whether this was interest which would make the transaction a money-lending one.

Credit Card Facility Club — Nature of — Accounting system — Examination of its accounting system — Whether "service charges" for late payment could be called interest.

In this case the appellant appealed against the decision of the Senior Assistant Registrar who had given leave to the respondent to sign final judgment against the appellant. The appellant was a member of the Diners Club and over a period of 5 months from March 1974 to and including July 1974 had incurred an indebtedness to the respondent in the sum of $18,055.33. In the accounting system adopted by the respondent, the liability of the appellant actually ran from May 1 to July 31. The respondent charged the appellant an additional sum of $559.76 as "service charges". The appellant contended that this was interest and the issue raised was whether the appellant had established payment of interest so as to raise the issue of money-lending.

Held: (1) the charge was made only for late payment. It was a situation created entirely by the default of the appellant and a comparison could be drawn with that of an Order of Court made on a friendly loan without interest in which the court in its discretion had awarded interest from the date of filing until payment;

(2) the onus was on the appellant to show the payment of interest in order to raise the defence of money-lending and he had not discharged it.

Case referred to:-

(1) *Old Discount Limited* v. *John Playfair Ltd.* [1938] 3 All E.R. 275.

CIVIL SUIT.

Roger K.H. Tan for the appellant.

Miss J. Somasundram for the respondent.

Chang Min Tat J.: The main point raised in this appeal from the decision of the Senior Assistant Registrar giving leave to the respondent on an O. 14 application to sign final judgment was the issue of money-lending.

The appellant was a member of the Diners Club and over a period of about 5 months from March 1974 to and including July 1974 incurred an indebtedness to the respondent in the sum of $18,055.33. In the accounting system adopted by the respondent, the liability of the appellant actually ran from May 1 to July 31. The major part of this amount was incurred at Genting Highlands Hotel. A simple analysis shows that the monthly amounts were $8,157.06 at the end of April 1974, $5,094.92 at the end of May 1974, $2,210.59 at the end of June 1974 and $2,033.00 at the end of July 1974. The balance of $559.76 made up of 3 sums of $122.36, $200.62 and $236.78 was for what the respondent called service charges but was, in the view of the appellant, interest.

The Diners Club does not offer any facilities such as are commonly associated with a club in the commonly accepted sense of the word. It functions purely as a convenience for its members. It enables a member to sign for goods taken or for services rendered, and possibly for advances of moneys. It pays such bills on behalf of the member and looks to the member for repayment. It is as it calls itself a credit card facility club.

Miss Somasundram for the respondent duly made the point that even if the Club charged interest on its advances, which she denied, it was nevertheless a commercial convenience which had come to stay with us and which on an analogy to be drawn with hire purchase firms and for the reasons given, *inter alia*, in *Old Discount Limited* v. *John Playfair Ltd.*[1] must take it outside the scope of money-lending. There is, in my view and with respect, great force in her submission, to which there has been no real reply but on an examination of the facts in this case, it is problematical and uncertain whether the appellant had established the payment of interest so as to raise the issue of money-lending.

The sum standing due at the end of April 1974 was $8,157.06. It was made up of chits signed in March and April. No interest or service charge was levied at the end of April. It was due to be paid after May 1, 1974 on presentation of the bill and within the month. If this sum had been repaid during May and before the end of the month, no interest or service charge would have been levied. When the sum was not paid, then only would there be a charge which I worked out at 15%, imposed at the end of the month but even then no charge was made on the sum incurred during the month of May 1974.

It is therefore abundantly clear that the charge was made only for late payment. It is a situation created entirely by the default of the appellant and I cannot resist drawing the comparison with an Order of Court made on a friendly loan without interest in which the court in its discretion has awarded interest from the date of filing until payment and asking whether in these circumstances the default of the debtor in paying his just debts had not made the transaction which in the beginning was not such a one into a money-lending one. The absurdity of such a contention is, I trust, only too apparent.

The onus is on the appellant to show the payment of interest in order to raise the defence of money-lending and I am of the view that he has not discharged it.

The other point was the objection to Mr. N. Marjoribanks as the proper deponent for the affidavit in support. The deponent however was not only the solicitor having the conduct of the case but as he himself claimed in the affidavit, he was also the lawfully constituted attorney of the respondent and authorised to make the affidavit. I do not think there is any substance in this objection.

For those reasons, I dismissed the appeal with costs.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Lovelace & Hastings.*